IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Major Amrit Singh Dhupia
vs.
Prafful Chandra D. Contractor

S.B.CIVIL SECOND APPEAL NO.8/2002 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 7.11.2001 PASSED BY SUSHRI CHANDRAKALA YADAV, ADDITIONAL DISTRICT JUDGE, ABU ROAD IN CIVIL APPEAL DECREE NO.26/1996.

DATE OF JUDGMENT ::: 12.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. MC Bhoot, for the appellant.
Mr. SC Maloo a/w Mr.M Shishodia, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties and perused the record.

The plaintiff/landlord/respondent filed the suit for eviction of defendant/appellant/tenant on various grounds. The trial court vide its judgment dated 16.5.1994 rejected the plaintiff's prayer for striking out of defendant's

defence on the ground of non-payment of rent during the pendency of the suit.

The appellate court by separate order dated 7.11.2001 declared the appellant/tenant defaulter in payment of rent during pendency of the suit for the months April, May, June, July of 1989 and July, August and September of 1994. The appellate court also dismissed the tenant's application for condonation of delay in payment of rent. The appellate court decreed the suit of the plaintiff on the ground of denial of title, acquiring suitable accommodation by the appellant and for non-user of the suit shop. The appellate court also decreed the suit of the plaintiff on the ground of default as the appellant was not found entitled to benefit under Section 13(6) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

The judgment and decree of the appellate court dated 7.11.2001 has been challenged by the appellant in this second appeal.

Learned counsel for the appellant submits that the trial court held that there was delay of only 12 days, therefore, that delay can be condoned by the Court. It is also submitted that the first appellate court declared the appellant defaulter in payment of rent and wrongly refused the application for condonation of delay. It is also submitted that the finding of the first appellate court reversing the judgment and decree of the trial court without meeting the grounds given by the trial court is perverse.

I have considered the submissions of learned counsel for the appellant and have perused the reasons given by the courts below.

So far as default in payment of rent is concerned, admittedly, the appellant committed default in payment of rent so far as month of September, 1988 is concerned. In the trial court, no application for condonation of delay was submitted still the trial court under impression and by wrongly interpretating the judgment of this Court held that because of the said delay, the defence cannot be struck off. The delay could have been condoned but on showing some cause for not depositing the rent in time and admittedly no application for condonation of delay was ubmitted by the appellant before the trial court. In the appellate court, the plaintiff made clear that the respondent has not paid rent in time for number of months – August, September, 1987; June, November, 1988 ; January, February, 1989 ; September, 1986 ; September, 1988 and November, December, 1990.

The appellant submitted application before the first appellate court and after going through the facts mentioned in the application, this Court is satisfied that so far as delay in payment of rent for the months of April, May, June, July, 1989 and July, August, September, 1994 is concerned, the same is admitted. The appellant also in the same application prayed for condonation of delay but without showing any cause for condonation of delay. It appears from the facts of the case that the appellant is

habitual defaulter and proceeded on assumption that it is the duty of the court to condone the delay rather to seek condonation of delay. In view of this sole reason, this Court is not inclined to interfere in the finding of the first appellate court about the default committed by the appellant in payment of rent.

So far as other grounds are concerned, substantially they are challenged on the ground that the reasons given by the trial court have not been considered and no other ground has been raised in the appeal. After going through the impugned judgment, this Court is convinced that the first appellate court applied its mind to the facts of the case and after keeping in mind the reasons given by the trial court before reversing the judgment of the trial court.

In view of the above, no substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that sufficient time may be granted to vacate the suit premises because the appellant will have to make alternative arrangement.

Learned counsel for the respondent submitted that since the original tenant has already died and his family is not residing, no time be granted.

It appears that the descendants of original tenant submitted reply to the application of the plaintiff before this Court and stated that the descendants of the sole

tenant are residing in the house in dispute. However, this finding is against the appellant as recorded by the first appellate court.

Be it as it may, looking to the totality of the facts, this Court deems that the appellant be granted one year's time to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month from today that he shall hand over the vacant possession to the landlord by or before 30.4.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.5.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya